IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/08/2003

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No.5420 OF 1996
and
W.P.M.P.No.8562 1996

Padi Pudunagar Pothunala Manram,
(Padi New Town Welfare Association),
a Society registered under the
Tamil Nadu Societies Registration Act,
Anna Nagar West Extension,
Madras-01, represented by its President. .. Petitioner.

-Vs-

1. State of Tamil Nadu
represented by Secretary,
Revenue Department,
Fort St. George,
Madras - 9.

2. Secretary to Government,
Housing & Urban Development
Department, Fort St. George,
Madras-9.

3. Special Commissioner &
Commissioner of Land Administration,
Madras-5.

4. District Collector,
Chengalpattu District at
Kancheepuram.

5. Madras Metropolitan Development
Authority, represented by its
Member Secretary,
Madras.

6. The Tamil Nadu Slum Clearance Board,
represented by its Chairman,
Madras-5.

7. Special Tahsildar (Assignment),
Saidapet,
Madras - 15.

8. Ambattur Municipality,
represented by its Commissioner,
Ambattur,
Madras. .. Respondents.

Petition filed under Article 226 of the Constitution of India
for the issue of a writ of mandamus as stated therein.

For petitioner : Mr.G.Rajagopalan
Senior Counsel for
Mr.K.K.Senthil.

For respondents 1 to 4 and 7 : Miss.V.Velumani,
Addl. Govt. Pleader.

For 5th respondent : Mr.V.Perumal

For 6th respondent : Mr.K.Venkataramani

For 8th respondent : Mr.R.Ravichandar.

:ORDER

The petitioner claiming to be Padi New Town Welfare Association, prays for the issue of a writ of mandamus directing respondents 1 to 4 and 7, to issue pattas to the members of the petitioner Association in respect of sites occupied by them in Survey No.253/14 in Padi Village, Paduputhu Nagar.

2. According to the petitioner, there are about 681 members in the petitioner's Association. The original classification of the land in Survey No.253/14 in Padi Village was Eri poromboke and in the year 1 988 the said land has been reclassified as Grama Natham under the orders of the Government. The area consists of 20 acres and there are about 750 families living in that area. The members of the Association having put up construction in the land and paying property tax to Ambattur Municipality, roads have also been laid and the houses provided water connections and given street light facilities. Though a sum of Rs.12,00,000/- had been sanctioned in favour of the Tamil Nadu Slum Clearance Board, no amount has been spent by the Tamil Nadu Slum Clearance Board for any development activity. It is further stated that they have been representing to the Government for the issue of patta and for regularisation of the encroachment. Though the Special Tahsildar, Saidapet, has sent all the details to the Government for issuing of patta, pattas have not been issued to most of the members of the Association.

Pattas have been issued only to 45 persons and for the remaining persons pattas have not been issued. It is further stated that no purpose will be served if the Tamil Nadu Slum clearance Board issues any allotment order in view of the fact that more than 74 0 families are living in that area by having put up their own superstructures. Hence, the above writ petition.

3. In the counter filed by the Special Tahsildar, it is contended that Survey No.253 of Padi Village was originally classified as Tank Poramboke with an extent of 99.80 acres. The Government had decided to hand over the entire extent of land to Tamil Nadu Housing Board in G.O.Ms.No.2138, Revenue Department, dated 18.12.1979. However, as there were encroachments it was decided to regularise the encroachments and to issue house site pattas. In G.O.Ms.No.543 Revenue Department dated 5.4.1988, the Government issued orders transferring the entire extent of land to Tamil Nadu Housing Board for assignment of house sites to eligible persons. It is also stated that necessary action was being taken to regularise the encroachment. In the meantime, the Tamil Nadu Slum Clearance Board had also requested handing over of the entire slum area inclusive of the land in Survey No.253/14 for effecting certain improvements under Tamil Nadu Urban Development Project Scheme. It is further stated that action is being taken to regularise the encroachments to eligible persons who were in occupation of the area prior to 30.06.1984 and the issue of granting patta is under consideration. Action was being taken to regularise the encroachment which were in existence prior to 30.6.1984. Further, in the meantime the sixth respondent has proposed to develop the area under the Tamil Nadu Urban Development Project Scheme. Hence the issue of assignment of house site patta has been kept in abeyance. The petitioner has no right to demand house site patta.

4. In the counter filed by the Tamil Nadu Slum Clearance Board, it is contended that the land in question has been selected by the Tamil Nadu Slum Clearance Board under MUDP Phase-II Plan and that the Board by its resolution dated 4.2.1986 had approved the proposal for developing the Slum. C.M.D.A. had already approved as is where is, lay out for 727 plots. The eligible list of 727 persons have already been drawn. On the basis of the list of beneficiaries, Tamil Nadu Slum Clearance Board had issued allotment orders in respect of 480 persons. They have also completed the work such as providing facilities like roads, drains, street lights, etc. and handed over all the developments to Ambattur Municipality for future maintenance. The hut dwellers residing in the Scheme area are already paying monthly instalments from 1996 onwards after having issued allotment orders. Since the eligible slum dwellers have been issued allotment orders and they are paying monthly instalments, the claim of the petitioner cannot be entertained.

5. I have heard both sides. Mr.G.Rajagopalan, learned Senior Counsel for the petitioner after taking me through the Government Orders contended that in terms of the said Government Orders, they represent the original occupants and hence entitled to patta and that the Tamil Nadu Slum Clearance Board was attempting to introduce other individuals who have nothing to do with the area in question. I have considered the submission of the learned counsel. This is one more case of usurpation of natural water ways,

storage tanks by self seeking individuals with the blessings of the Revenue Officials. As usual it begins with the occupation of "poor people" and "landless persons", subsequently slowly taken over by well to do individuals and benamis of "well to do" individuals. The Revenue instead of protecting such natural sources of water storage in a proper manner, not only permits such illegal occupation under their very nose, but also go to the extent of changing the classification of land from Eri Poramboke to Natham Poramboke and gift it to illegal encroachers. Strangely levy of tax also is made in respect of such illegal occupation which is totally untenable in terms of either the City Municipal Corporation Act or the District Municipalities Act or Panchayats Act. The excuse which is given by the Revenue for such change of classification is that the tank was "abandoned". I ask myself the question as to where is the possibility of a tank being abandoned and abandoned by whom? If the tank area is properly protected and kept free from encroachment and periodical silting is carried out such tanks would always serve the purpose for which they were put up. Whether they are artificial tanks or naturally formed tanks they serve as a storage point for water collected during rainy season. They are meant to provide not only water for irrigation purposes, but also for drinking for the nearby villages and towns and also to maintain the underground water table. Artificial tanks were dug during the period of the old Kings or during the British regime. After independence, thanks to democracy and vote catching compulsions, unsocial activities of such illegal encroachers are encouraged with the politicians and land grabbers behind them. Thereafter, the ever ready Governmental machinery legalises such illegal activity even by converting the very classification of the land into "Natham" and ultimately gift it to the encroachers. With the result, today, Tamil Nadu is fastly receding to a water starved State. When elsewhere in the World deserts are being converted into greenery our State is specialising in the converse. Neither urbanisation, nor industrialisation can be cited as excuses for such a scenario. If only there was strict control over the encroachment of water ways and catchment areas and there is proper management of open areas by excluding water catchment areas, tanks, river beds etc., the present situation could have been avoided. River Thames continues to flow through London for centuries despite being one of the top most populated metropolis in the World. It is true that we do not have perennial rivers to be compared with River Thames, but it continues to flow unabated only due to the basic civic sense of the public and the ever vigilant official machinery in not permitting encroachments over its banks and or blocking the sources and courses of water flow. New Delhi still retains its greenery due to strict enforcement of civic regulations. Many such examples of many Cities in the World can be given. Genuine claims of poor people for shelter could easily be met by identifying suitable areas by putting up tenements for them. The Slum Clearance Board which was created for the said purpose has now become practically defunct. With the inaction of the Government, encroachment had become the order of the day, to the extent of the encroachers justifying their conduct as though they have a legal right to do so and to claim alternate sites and also would not even condescend to accept alternative relocation. If the object of the encroachment was only for the sake of the poor to have a shelter, then they should be satisfied with the arrangements to be made by the Slum Clearance Board. But the object of the encroachment has always been to make unlawful gains and ultimately it is the land grabbers who finally benefit

by taking over the land granted to poor houseless persons.

6. Here is a case which deals with usurpation of a renowned tank which once served as a major irrigation source for the area. Industrialisation in the area had resulted in filling up the catchment sources and the drying up of the tank. Tank area has now become a goldmine for the illegal encroachers and the corrupt among the politicians and Revenue Officials. Today, the area which was once Eri Poramboke is now classified as Natham poramboke which ought not to have happened if only the tank had been properly maintained. What follows is a tussle between the rival encroachers claiming to be the original occupants and vested rights over the property by pleading that they are the lawful occupants.

7. The pleadings as stated above would disclose that the petitioner claims to be the genuine representative of the original occupants of the land and they contend that the Slum Clearance Board is attempting to allot the area to others who are alleged to be the favourites of the sixth respondent. Thus the pleadings of the parties disclose only rival claims, allegations and counter allegations against the Revenue Officials and local authorities that they are trying to patronise the occupants/individuals who according to the petitioner, are not the genuine occupants. The petitioner Association claims to represent genuine and original occupants and that according to them even though their rights have been duly recognised, there is inaction on the part of the respondents. It is paradoxical to hear the illegal encroachers claiming to be genuine occupants.

8. It is not possible for this Court under Article 226 of the Constitution of India to go into the rival claims and adjudicate as to who is the real occupant entitled to patta. Nor will this Court stand in the way of the respondents, Government/Local Authority/Slum Clearance Board, taking over the property for the purpose of proper management and development of the area. For the said purpose, they are entitled to evict unlawful occupants in a manner known to law or to regularise the encroachment by identifying the real occupants, if the authorities find that there is no objection for such occupation. No encroacher has a legal right to get patta. It is open to the Government to clear any encroachment if such clearance is necessary to ensure water sources and water ways. The fact that the occupants have been paying electricity charges and paying taxes cannot confer any title or rights on them. Illegal action on the part of the authorities in assessing the said properties to tax which they are not entitled to, cannot confer any right on the illegal occupant.

9. It is only in the event of the Government in their own discretion deciding to grant patta, the issue of ascertaining the genuine occupants would arise for consideration. The requirement of the Slum Clearance Board to put up tenements cannot be resisted by the encroachers. The Slum Clearance Board was established only to eradicate the slums and to rehabilitate the slum dwellers. It is true that in doing so the Slum Clearance Board should identify the genuine poor occupants to enable them to be rehabilitated in the tenements put up or to be put up by the Slum Clearance Board and not to patronise vested interests. The encroachers have no right to

perpetuate their illegal occupation as against the claims of the State more so as against the operations of the Slum Clearance Board and actions to maintain water sources.

10. In the result, I am inclined to pass the following order:-
(I) It is well within the rights of the Government/Local Authority to identify areas which are required to be cleared of all encroachments in order to maintain and retain water ways, catchment areas etc. and to ensure free flow of traffic on streets and roads. In order to ensure such requirements, eviction can be resorted to by following the procedure in accordance with law.
(II) Lands to be vested under the control of the Slum Clearance Board shall be identified and handed over to the Slum Clearance Board after clearance of the encroachments. Encroachers have no right to resist the land being taken over by and vested with the Slum Clearance Board. Thereafter, it is open to the Slum Clearance Board to put up tenements and to relocate the genuine Slum dwellers.
(III) It is only after satisfying the two directions as mentioned above, if any further encroachment/area remains and if the Government/ Local Authority feel that there can be no objection for regularising their occupation or for the grant of patta, the question of granting any relief to the petitioner would arise and only in such an event the appropriate authority will have to identify the true occupants. Identification of the true occupant has to be properly complied with by taking into account the claims of the petitioner/Association and if there are any other claims by strict verification of the materials on the basis of which claim of each individual is made. In the said event, opportunity of personal hearing and to let in evidence may be given if there is any controversy or rival claims.
(IV) For the completion of the said process no short time frame can be fixed considering that Government/Local Authority/Slum Clearance Board have to first comply with the first two directions. Therefore, it is sufficient to direct all the said three authorities to coordinate and to comply with the above directions within a period of six months from the date of receipt of a copy of this order. The writ petition is ordered. No costs. Connected miscellaneous petition is closed as unnecessary.

Index: Yes.
Internet :Yes.
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To
1. The Secretary,
Revenue Department,
State of Tamil Nadu
Fort St. George,
Madras - 9.

2. Secretary to Government,
Housing & Urban Development
Department, Fort St. George,
Madras-9.

3. Special Commissioner &
Commissioner of Land Administration,
Madras-5.

4. District Collector,
Chengalpattu District at
Kancheepuram.

5. Madras Metropolitan Development
Authority, represented by its
Member Secretary,
Madras.

6. The Tamil Nadu Slum Clearance Board,
represented by its Chairman,
Madras-5.